

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY)	MDL No. 1456
AVERAGE WHOLESALE PRICE)	
LITIGATION)	CIVIL ACTION: 01-CV-12257-PBS
)	
THIS DOCUMENT RELATES TO:)	Judge Patti B. Saris
)	
<i>State of Montana v. Abbott Labs, Inc., et al.</i>)	
D. Mont. Cause No. CV-02-09-H-DWM)	

**B. BRAUN OF AMERICA INC.'S RENEWED MOTION TO DISMISS
THE STATE OF MONTANA'S SECOND AMENDED COMPLAINT**

Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), B. Braun of America Inc. (“BBA”) respectfully renews its Motion to Dismiss the State of Montana’s Second Amended Complaint (“MTAC”) on the grounds that the Court lacks personal jurisdiction over BBA and it is not a proper party to this litigation.¹

BBA initially filed its Motion to Dismiss on September 15, 2003, alleging, *inter alia*, that the claims against it in the MTAC must be dismissed for lack of personal jurisdiction and because BBA is not a proper party to this litigation because BBA does not manufacture, distribute, or sell any of the drugs identified in the MTAC. At the State of Montana’s request, the Court allowed the State to engage in limited jurisdictional discovery and directed it to “respond to the issues of personal jurisdiction and whether the named entity [BBA] is a proper Defendant for the drugs listed by August 24, 2004.” (Mem. and Order of June 10, 2004 at 35.)

¹ This Renewed Motion relates back to the Motion to Dismiss filed by BBA on September 15, 2003, upon which the Court reserved judgment until after August 24, 2004. Counsel for the State of Montana and counsel for BBA conferred in good faith regarding the issue of the Court’s lack of jurisdiction over BBA prior to filing the Motion to Dismiss in September 2003 and were unable to reach a resolution. The State of Montana has not withdrawn its complaint against BBA or in any way altered its position on this issue. Because this Motion is not presenting any new issues to the Court that were not raised in the prior Motion to Dismiss, no additional Rule 7.1(a)(2) certification has been included herein.

The Court's deadline has passed, and the State of Montana has neither engaged in any jurisdictional discovery of BBA nor filed any supplemental memorandum with the Court. As explained in the accompanying Memorandum, the undisputed facts establish that BBA did not manufacture any of the drugs identified in the MTAC and does not have sufficient contacts with the State of Montana to allow this Court to exercise personal jurisdiction over it.

Therefore, for the reasons stated in the accompanying memorandum, B. Braun of America Inc. respectfully requests that the Court dismiss all claims brought against it by the State of Montana.

Dated: September 10, 2004

Respectfully submitted,

s/ Colin R. Kass

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing B. Braun of America Inc.'s Renewed Motion to Dismiss the State of Montana's Second Amended Complaint has been served on all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to Verilaw Technologies for posting and notification to all parties on this 10th day of September, 2004.

s/ Colin R. Kass

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